

From: [Logan, Paul](#)
To: [Hofer, Matthew L.](#)
Cc: [Berg, ElizabethG](#); [Boydston, Michael](#); [Bermes, Peter](#); [Engels, Alan](#); [Gilbert, Alexas](#); [Aldinger, Dayle](#); [Hsiao, Peter](#)
Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885
Date: Friday, June 8, 2018 8:41:23 AM

Thanks Matt. EPA agrees with your proposed revision to subcategory 5 of Utah's FOIA request, as highlighted in your email immediately below.

Also, thanks for confirming that Utah agrees with EPA's proposal on searching for pictures.

We're next scheduled to talk on June 19th. Please feel free to contact me before then if you have any questions. In the meantime, EPA will continue to process Utah's FOIA request.

Paul Logan

Senior Assistant Regional Counsel | EPA Region 8
303.312.6854 | logan.paul@epa.gov

From: Hofer, Matthew L. [mailto:MHofer@mofo.com]
Sent: Wednesday, June 6, 2018 3:28 PM
To: Logan, Paul <Logan.Paul@epa.gov>
Cc: Berg, ElizabethG <Berg.ElizabethG@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>; Bermes, Peter <Bermes.Peter@epa.gov>; Engels, Alan <engels.alan@epa.gov>; Gilbert, Alexas <Gilbert.Alexas@epa.gov>; Aldinger, Dayle <Aldinger.Dayle@epa.gov>; Hsiao, Peter <PHsiao@mofo.com>
Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Thanks Paul, hope you had a good vacation.

Utah concurs with the proposal on searching for pictures that you highlighted below. Regarding your proposed revision to our revised subcategory 5, Utah concurs with everything except the addition of the word "final." We don't want to complicate or limit the request by getting into the subjective question of whether a report or assessment is "final." Moreover, if a report was prepared but never "finalized," we would expect that report to be produced in response to this request as well. Thus, we are amenable to the following language for the revised request:

5. All written reports and damage assessments pertaining to the environmental impacts of the Gold King Mine Blowout generated between August 5, 2015 and October 31, 2015.

If you have other questions or concerns about this revision, I'm happy to discuss on a call.

Best regards,

Matt

MATTHEW HOFER

Associate | Morrison & Foerster LLP
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From: Logan, Paul [mailto:Logan.Paul@epa.gov]
Sent: Wednesday, June 06, 2018 1:53 PM

To: Hofer, Matthew L.

Cc: Berg, ElizabethG; Boydston, Michael; Bermes, Peter; Engels, Alan; Gilbert, Alexas; Aldinger, Dayle

Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Thanks Matt for your email below. I returned from vacation yesterday, and am catching up on ongoing matters.

EPA appreciates your proposed revision to subcategory 5 of Utah's FOIA request. EPA suggests that we further revise it as follows, to focus on the records that we think you may be seeking (additions in underline, deletions in strikeout):

5. All final, written reports and damage assessments pertaining to the environmental impacts of ~~for~~ the Gold King Mine Blowout generated between August 5, 2015 and October 31, 2015.

I am not certain whether EPA could provide a final response to this revised request by June 22nd, given that we'd still need to search electronic archives for relevant reports and damage assessments, even though we wouldn't be searching email. However, I am confident that EPA would be able to respond far more quickly to this request than to the prior request. Even acknowledging that the revised request wouldn't be limited to the Durango Unified Command Center.

Additionally, could you please let me know whether you concur with EPA's proposal on searching for pictures, as highlighted below in my May 25th email?

Thanks Matt. I look forward to hearing back from you.

Paul Logan

Senior Assistant Regional Counsel | EPA Region 8

303.312.6854 | logan.paul@epa.gov

From: Hofer, Matthew L. [<mailto:MHofer@mofo.com>]

Sent: Wednesday, May 30, 2018 5:27 PM

To: Logan, Paul <Logan.Paul@epa.gov>

Cc: Boydston, Michael <Boydston.Michael@epa.gov>; Rivera, Adrienne <Rivera.Adrienne@epa.gov>; Engels, Alan <engels.alan@epa.gov>; Gilbert, Alexas <Gilbert.Alexas@epa.gov>; Berg, ElizabethG <Berg.ElizabethG@epa.gov>; Bermes, Peter <Bermes.Peter@epa.gov>; Hsiao, Peter <PHsiao@mofo.com>

Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Paul,

Thanks for our call last week and for your email summary. I wanted to get back to you regarding subcategory 5 of our request, which you indicated would likely involve collecting over 10,000 emails. In light of that estimate, we would propose further narrowing subcategory 5 to avoid collection of unnecessary documents. Our proposal for a revised subcategory 5 is:

5. All written reports and damage assessments for the Gold King Mine Blowout generated between August 5, 2015 and October 31, 2015.

We propose excluding emails from this subcategory, but documents responsive to the category would not be limited to any particular location or office (e.g., it would not be limited to the Durango Command Center or the other offices you indicated below). Please let us know if EPA is amenable to modifying the request in this way, and whether documents responsive to the request can be produced at the same time as subcategories 1-3, June 22.

Best regards,

Matt

From: Logan, Paul [<mailto:Logan.Paul@epa.gov>]

Sent: Friday, May 25, 2018 3:03 PM

To: Hofer, Matthew L.

Cc: Boydston, Michael; Rivera, Adrienne; Engels, Alan; Gilbert, Alexas; Berg, ElizabethG; Bermes, Peter

Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Matt,

This email follows up on and summarizes our phone call yesterday.

We mostly discussed the timing of EPA's response to Utah's FOIA request, which includes five subcategories. Overall, EPA agrees to release documents on an interim basis, rather than waiting until the end of the project to release all documents at the same time.

EPA's current completion date is June 22, 2018. In the normal course, FOIA allows agencies 20 business days to respond to requests. In cases of "unusual circumstances," FOIA allows agencies 30 business days to respond. Utah's FOIA request involves unusual circumstances because, for example, the records sought come from other EPA offices (such as headquarters offices) and involves a "voluminous" amount of records. EPA is cautiously optimistic that we will be able to respond to subcategories 1, 2 and 3 of Utah's FOIA request by June 22nd.

However, as we discussed, EPA will almost certainly need more time to respond to subcategory 5, due to the number of places where we need to search for documents, and the volume of documents that we're anticipating collecting. As we discussed, an EPA collection in response to a previous FOIA request, which would only partially respond to subcategory 5, exceeded 10,000 emails.

Concerning subcategory 2, video and recordings of the "blowout," we discussed the following:

- In my May 10th email to you, I mistakenly wrote "The timeline for this request is August 5, 2015 through September 5, 2018." We agreed that correct date range is August 5, 2015 through September 5, 2015.
- EPA has searched for potentially responsive videos. We found two groups of videos. Both are posted on EPA's GKM website at the following address: <https://www.epa.gov/goldkingmine/gold-king-mine-videos>
 - Some of the 8/5/15 videos posted on the website were redacted. EPA will review the unedited versions of the videos for exemption from release under FOIA.
 - The 8/14/15 videos don't appear to be edited. Additionally, they do not document the "blowout" as described in Utah's FOIA request, and therefore do not appear to be responsive to the request. As a result, EPA will not review them further. Nevertheless, you may access them at the above-referenced website.
- EPA has searched for potentially responsive pictures. In response to a previous FOIA request, EPA searched for and released all pictures it collected that were taken within 24 hours after the release, as well as up through about August 10th. These pictures can be found on EPA's GKM website at the following address: <https://www.flickr.com/photos/usepagov/sets/72157654862884644>
- As we discussed, EPA proposes not to search for additional pictures, as the focus of this subcategory of Utah's FOIA request is the release on August 5th. Pictures after August 10th would not document the release. You stated that you would further consider whether Utah wishes to request pictures taken after August 10th, and if so, you would let me know. We also discussed that while EPA can search for additional pictures, it will necessarily take more time and will likely extend the amount of time that EPA needs to respond to Utah's FOIA request.

Concerning subcategory 5, emergency response documents, we discussed the following:

- This subcategory will take the longest time to respond to. It involves email and other documents from a large number of EPA employees.
- At EPA's suggestion, we previously agreed to focusing this subcategory on records generated by or shared with members of the Durango Unified Command Center. Since that time, EPA has learned that there were three other response centers, whose members might have records concerning the emergency response: the Farmington, NM field command center (including Region 6 and Region 9 employees), the Window Rock, AZ field command center (including Region 9 employees), and the EPA headquarters Emergency Operations Center (EOC). We discussed that EPA could expand its search to those other three centers, but that it would necessarily delay EPA's response. You stated that you would consider whether you wanted EPA to expand its search to those three other command centers, and that you would let me know.
- EPA described that we will need to identify search terms to conduct the search for electronic records that may be responsive to this subcategory. EPA often works with FOIA requesters to try to agree to search terms, and will do so here as well. Peter Bermes will be in touch with you next week to discuss the search terms.

We also agreed that I would reschedule our June 11th phone call to June 19th.

Thanks Matt for our phone call yesterday. I hope you have a good Memorial Day weekend.

Paul Logan

Senior Assistant Regional Counsel | EPA Region 8
303.312.6854 | logan.paul@epa.gov

From: Hofer, Matthew L. [<mailto:MHofer@mofo.com>]

Sent: Monday, May 21, 2018 4:53 PM

To: Logan, Paul <Logan.Paul@epa.gov>

Cc: Engels, Alan <engels.alan@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>; Gilbert, Alexas <Gilbert.Alexas@epa.gov>; Berg, ElizabethG <Berg.ElizabethG@epa.gov>; Bermes, Peter <Bermes.Peter@epa.gov>; Hsiao, Peter <PHsiao@mofo.com>

Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Thank you Paul, I am available for a call on Thursday any time between 10:00 a.m. and 4:00 p.m. PST.

Best regards,

Matt

From: Logan, Paul [<mailto:Logan.Paul@epa.gov>]

Sent: Monday, May 21, 2018 1:37 PM

To: Hofer, Matthew L.

Cc: Engels, Alan; Boydston, Michael; Gilbert, Alexas; Berg, ElizabethG; Bermes, Peter; Hsiao, Peter

Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Matt,

In my May 10th email below, I indicated that before our phone call on June 11th, EPA would contact you to discuss a fee estimate for Utah's FOIA request, and to discuss with you EPA's overall timeframe to respond to your request. I understand that after I sent my May 10th email, EPA approved Utah's fee waiver request. Therefore, we don't need to discuss a fee estimate. However, I'd like to schedule a call this Thursday to discuss EPA's overall timeframe to respond to your request. Please let me know when you're available on Thursday, and I'll send a meeting invite for a time that works both for you and for EPA.

Paul Logan

Senior Assistant Regional Counsel | EPA Region 8
303.312.6854 | logan.paul@epa.gov

From: Logan, Paul

Sent: Thursday, May 10, 2018 10:48 AM

To: Hofer, Matthew L. <MHofer@mofo.com>

Cc: Engels, Alan <engels.alan@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>; Gilbert, Alexas <Gilbert.Alexas@epa.gov>; Berg, ElizabethG <Berg.ElizabethG@epa.gov>; Bermes, Peter <Bermes.Peter@epa.gov>; Hsiao, Peter <PHsiao@mofo.com>

Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Matt,

Thank you for the two emails you sent below – one yesterday (May 9th), and one on Tuesday (May 8th).

EPA appreciates your willingness to work with us to clarify your FOIA request. Below I've listed a few follow up items.

Description of Records Sought

Your May 8th email confirms that your FOIA request has been revised to consist of the five subcategories of documents listed in your May 1st email, as clarified in my May 7th email. Thank you.

Further, as a result of your May 8th email, EPA agrees that your FOIA request reasonably describes the records that you seek, and EPA will now begin processing your request.

Concerning the second subcategory of records that you seek, which you further referenced in your May 8th email, EPA understands your request for video to be seeking unedited footage of the Gold King Mine release on August 5, 2015. To the extent that footage has been made publicly available with redaction, you are seeking the unedited footage. To the extent that EPA asserts FOIA exemptions over any part of the footage, EPA will notify you.

Concerning location of the records that you seek, in your May 8th email you posit that the records sought "should be readily identifiable, and kept somewhere in a single location, in their respective files with the title 'Gold King Mine' somewhere in the name of the files." Given my experience and involvement with this matter, that is regrettably incorrect. To conduct and respond to the investigations you cited, multiple people within multiple offices at EPA headquarters consulted with each other, and consulted with multiple people in multiple offices in multiple EPA regions. That is, many people from many EPA offices across the country were consulted in the investigations you cited. As a result, EPA's search for records will not be simple, but will require the agency to search the records of multiple people in multiple offices of both EPA headquarters and multiple EPA regional offices.

Costs

In your May 9th email, you submitted your analysis as to why EPA should reconsider its fee waiver denial. Thank you. I have asked Alan Engels to ensure that your analysis is shared with the appropriate EPA personnel to consider your request. That information will also be included in the FOIA request that Alan sends to the EPA Inspector General's office, concerning subcategory 4 of your FOIA request.

In the meantime, and as required by law, EPA will generate an estimate of fees to search for and duplicate records responsive to your request. At this point, it appears likely that the estimated cost will not exceed

\$10,000, and may be much less. In any event, we will contact you as soon as we have an estimated cost. Of course, if your fee waiver request is ultimately granted, then we will not proceed any further with the fee estimate.

Timing

As previously discussed, I will schedule a phone call a month from today, on June 11th (as June 10th is a Saturday), to discuss EPA's status in searching for and reviewing records that respond to your request. I'll send you an Outlook meeting invite to schedule that call.

Between now and then, EPA will contact you with a fee estimate. At the same time that we discuss EPA's fee estimate, we will discuss with you EPA's overall timeframe to respond to your request. We are not yet in a position to determine how long EPA will need to respond, because we have not yet figured out how long it will take to search for records, and because we don't yet know how many records we will find and which we will need to review. However, we agree with your suggestion of providing interim responses to your FOIA request, rather than waiting until the end to provide a single response.

Please let me know if you have any questions.

Paul Logan

Senior Assistant Regional Counsel | EPA Region 8
303.312.6854 | logan.paul@epa.gov

From: Hofer, Matthew L. [<mailto:MHofer@mofo.com>]

Sent: Wednesday, May 9, 2018 12:28 PM

To: Logan, Paul <Logan.Paul@epa.gov>

Cc: Engels, Alan <engels.alan@epa.gov>; Hsiao, Peter <PHsiao@mofo.com>; Boydston, Michael <Boydston.Michael@epa.gov>; Gilbert, Alexas <Gilbert.Alexas@epa.gov>; Berg, ElizabethG <Berg.ElizabethG@epa.gov>; Bermes, Peter <Bermes.Peter@epa.gov>

Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Hi Paul,

As we discussed, I've provided an explanation of our fee waiver below that tracks the elements of 40 C.F.R. § 2.107(l). This explanation addresses both our request to EPA and our request to the EPA Inspector General. Please let us know the decision on our waiver applications as soon as they are available.

Best regards,

Matt

- 40 C.F.R. § 2.107(l)(2), first fee waiver requirement:
 - (i) The subject of the request:
 - The subject of the request concerns the federal government's investigations of the Gold King Mine Blowout. EPA has performed its investigation, the EPA Inspector General has performed its investigation, and Congress has performed its investigation. The documents generated by each of these investigations should be readily identifiable and kept somewhere in a single location.
 - (ii) The informative value of the information to be disclosed:
 - The records sought in this request will provide meaningfully informative facts regarding

- the federal government's role in the Blowout and its subsequent investigation, and those facts are likely to contribute to the public's understanding of the federal government's operations and activities in this regard. In addition, the request is likely to add to the public's existing understanding of the government's operations and activities regarding the Blowout because the request explicitly excludes any records that have already been publicly produced.
- (iii) The contribution to an understanding of the subject by the public is likely to result from disclosure:
 - Disclosure of the records sought in this request will substantially contribute to the public's understanding of the Blowout's causes and impacts. The government's role in the Blowout and its subsequent investigation are matters of general public concern, especially so for the residents of Utah and the other States who were adversely affected by the Blowout. As a State government, the State of Utah is ideally positioned to disseminate this information to a broad audience, including its affected residents. Utah intends to make the records sought in this request available to the general public through its website. Utah also has extensive expertise in the area of environmental contamination and remediation, in particular through its Department of Environmental Quality.
 - (iv) The significance of the contribution to public understanding:
 - The public's understanding of the federal government's involvement in the Blowout and its subsequent investigation is currently incomplete. For example, the public has not been informed as to whether EPA intended to open the Gold King Mine Level 7 Adit on August 5, 2015. The documents will also help the public better understand the impacts caused by the Blowout. And the public has been unable to assess the various reports and testimony the government has released about the Blowout because the information underlying those reports and testimony has not been made publicly available. Thus, the records sought in this request are likely to contribute significantly to the public's understanding of these issues.
- 40 C.F.R. § 2.107(l)(3), second fee waiver requirement:
 - (i) The existence and magnitude of a commercial interest:
 - The State of Utah seeks these records as part of its factual investigation into the causes and impacts to human health and the environment of the Gold King Mine Blowout. As a sovereign State, Utah is responsible for protecting its people and environment from these harms. The results of the investigation will inform how Utah fulfills this responsibility by responding to the Blowout. Accordingly, this request is not for the purpose of furthering Utah's commercial, trade, or profit interests.
 - (ii) The primary interest in disclosure:
 - As described above, the disclosure of these records is primarily in the public's interest because the records relate to the cause and effects of an environmental disaster with potentially severe effects on human health and the environment. Moreover, the request is made by a State government as part of an investigation to determine how best to protect the interests of Utah residents affected by the Blowout. Given the overriding importance of these issues, any other interest Utah may have in these records that could arguably be deemed "commercial" in nature is merely incidental. The public's interest in being informed about a threat to human health and the environment is always of paramount importance.

Sent: Tuesday, May 08, 2018 9:24 PM

To: 'Logan, Paul'

Cc: Engels, Alan; Hsiao, Peter; Boydston, Michael; Gilbert, Alexas; Berg, ElizabethG; Bermes, Peter

Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Thank you for your email Paul, the following is our response on behalf of the State of Utah:

Description of Records Sought: As we discussed, the State of Utah seeks to review the files from the various investigations by the federal agencies as to the cause of the Gold King Mine Blowout and its resulting impacts. EPA has performed its investigation, the EPA Inspector General has performed its investigation, and Congress has performed its investigation. The documents generated by each investigation should be readily identifiable, and kept somewhere in a single location, in their respective files with the title "Gold King Mine" somewhere in the name of the files.

As noted below, we understand EPA's position is that this request does not reasonably describe the records we are seeking. We think it reasonably does describe those records. If we were more granular about the request, for example if we asked EPA for every note about telephone calls that referred to the Gold King Mine Blowout, we think that would increase EPA's difficulty in providing the response, not decrease the difficulty. We think it would be easier for EPA if it identified and isolated the files in the three categories identified above and made them available for inspection and copying as required by law.

Nevertheless, as noted in our last email, we recognize that EPA and our State Department of Environmental Quality are sister agencies with overlapping goals and that we should work together to share this information. For that reason and to avoid further delay, we are willing to accept your suggested approach as the equivalent to phasing our larger FOIA request, with the pending request to constitute the subcategories identified in our May 1 email. We share the understanding that one can submit additional FOIA requests in the future to seek additional records. We continue to believe the former approach will be more efficient for EPA and hope you will leave open the option to return to that approach sometime in the future.

Clarifying our May 1 Request: Thank you for your work in putting together this list. Our follow-up comments are indicated below.

1. All interviews with witnesses regarding the Gold King Mine Blowout, regarding its cause, effect, and response, including but not limited to EPA employees, contractors, and other percipient and non-percipient witnesses. This should include recordings, transcripts, memos, and notes.

This is correct, thank you.

2. The unredacted video and recordings of the Gold King Mine Blowout. Again, this should include recordings and transcripts.
 - The timeline for this request is August 5, 2015 through September 5, 2018.
 - "Recordings" includes audio recordings, if any, as well as pictures.
 - The subject matter of this request is the August 5 release and its apparent downstream effects. Recordings of EPA response actions (e.g., treatment plant construction) that do not depict the release are not responsive.
 - EPA may not produce "unredacted" video if FOIA exemptions allow redaction. Please clarify whether you are seeking all video, or only video that EPA agrees to release without redaction.

We seek all videos without redactions. The redactions in the videos we have reviewed appear to remove profanities spoken by the contractors. There is no FOIA exception for that, and if there are other videos where EPA is asserting a FOIA exception, please let us know and we can discuss how to proceed for those videos.

3. The EPA file or files containing the materials used to brief Administrator Gina McCarthy and other EPA officials in their testimony and related presentations to respond to the Congressional investigation of the Gold King Mine Blowout. We expect that these files are generally located in a single location at or near EPA Headquarters.

- The timeline for this request is August 5, 2015 through the date of your request (April 13, 2018).

This is correct, thank you.

4. The EPA files for the EPA Inspector General's investigation of the Gold King Mine Blowout. We expect that these files are generally located in a single location at or near EPA Headquarters.
 - As we discussed, EPA proposes to forward this request to the EPA Inspector General's office as a separate FOIA request. If you agree, please also provide an explanation of your fee waiver request that addresses EPA's six factors for fee waivers (see 40 CFR § 2.107(l)), so that the EPA IG's office can consider your fee waiver request as a part of your FOIA request.

This is correct, thank you. Per our discussion, I will provide you with an explanation of the fee waiver addressing the regulatory factors, which you can both send to the Inspector General's office and use to reconsider the denial of a fee waiver for the request to EPA itself.

5. The EPA files from its emergency response team regarding its investigation of the Gold King Mine Blowout and the impacts to the environment, and EPA's actions taken to respond to the Blowout. We expect these files to be located primarily at EPA Region 8's office in Denver, but that some of the files will be located in EPA Headquarters.
 - The timeline for this request is August 5, 2015 through the date that the Unified Command Center in Durango was shut down, October 31, 2015.
 - This request concerns records generated by or shared with members of the Unified Command Center in Durango during its operational period. For example, EPA will search for the records, including but not limited to email, of emergency response team members who worked at or with the Unified Command Center.

This is correct, thank you.

General Agreements to Streamline Processing: We agree.

Costs: We agree, subject to our right to appeal regarding the fee waiver.

Timing: We would ask EPA to proceed as promptly as possible, and to provide partial responses as the information is received rather than waiting.

Avoid Duplicative Efforts: We agree.

Please let us know if there are other topics we should discuss.

Best regards,

Matt

MATTHEW HOFER

Associate | Morrison & Foerster LLP

From: Logan, Paul [<mailto:Logan.Paul@epa.gov>]

Sent: Monday, May 07, 2018 9:25 AM

To: Hofer, Matthew L.

Cc: Engels, Alan; Hsiao, Peter; Boydston, Michael; Gilbert, Alexas; Berg, ElizabethG; Bermes, Peter

Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Matt,

Thank you for your email below and for our productive phone call on Thursday. As promised during our phone call, I'm sending this email to summarize the call.

As previously stated, EPA views your April 13, 2018 FOIA request as improper because it does not reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them, as required by law. I think we're close to agreeing on clarifying the request for records as proposed in your May 1, 2018 email, such that your request will reasonably describe the records that Utah is seeking. At that point, EPA will be able to identify and locate such records and will begin processing your request.

Maintaining or Revising Utah's April 13th FOIA Request. You submitted a FOIA request dated April 13, 2018. On May 1, you sent an email in which you proposed that EPA proceed to process your April 13th request in phases, and proposed that EPA produce five subcategories of documents for the first phase. As we discussed on the phone, EPA suggests that you revise your April 13th request such that the subcategories identified in your May 1st email now constitute Utah's entire FOIA request, with the understanding that you can submit additional FOIA requests in the future to seek additional records. From EPA's view, our suggested approach is, as a practical matter, equivalent to phasing a single, larger FOIA request. However, it would avoid the need for EPA to deny the April 13th request as improper. Thank you for agreeing to consider this suggestion. Please let me know if you would like to revise your April 13th FOIA request per EPA's suggestion, or if you would like to maintain your original request.

Clarifying Your May 1st Request. We talked productively about how to clarify your May 1st request. Below I've summarized our discussion. Please let me know if my summary accurately reflects your understanding.

1. All interviews with witnesses regarding the Gold King Mine Blowout, regarding its cause, effect, and response, including but not limited to EPA employees, contractors, and other percipient and non-percipient witnesses. This should include recordings, transcripts, memos, and notes.
 - The timeline for this request is August 5, 2015 through the date of your request (April 13, 2018).
 - "Non-percipient witnesses" includes witnesses with knowledge pertaining to the day of the release even if they didn't necessarily view the release themselves, and includes both fact witnesses and expert witnesses (if there are any EPA expert witnesses).
2. The unredacted video and recordings of the Gold King Mine Blowout. Again, this should include recordings and transcripts.
 - The timeline for this request is August 5, 2015 through September 5, 2018.
 - "Recordings" includes audio recordings, if any, as well as pictures.
 - The subject matter of this request is the August 5 release and its apparent downstream effects. Recordings of EPA response actions (e.g., treatment plant construction) that do not depict the release are not responsive.
 - EPA may not produce "unredacted" video if FOIA exemptions allow redaction. Please clarify whether you are seeking all video, or only video that EPA agrees to release without redaction.

3. The EPA file or files containing the materials used to brief Administrator Gina McCarthy and other EPA officials in their testimony and related presentations to respond to the Congressional investigation of the Gold King Mine Blowout. We expect that these files are generally located in a single location at or near EPA Headquarters.
 - The timeline for this request is August 5, 2015 through the date of your request (April 13, 2018).
4. The EPA files for the EPA Inspector General's investigation of the Gold King Mine Blowout. We expect that these files are generally located in a single location at or near EPA Headquarters.
 - As we discussed, EPA proposes to forward this request to the EPA Inspector General's office as a separate FOIA request. If you agree, please also provide an explanation of your fee waiver request that addresses EPA's six factors for fee waivers (see 40 CFR § 2.107(l)), so that the EPA IG's office can consider your fee waiver request as a part of your FOIA request.
5. The EPA files from its emergency response team regarding its investigation of the Gold King Mine Blowout and the impacts to the environment, and EPA's actions taken to respond to the Blowout. We expect these files to be located primarily at EPA Region 8's office in Denver, but that some of the files will be located in EPA Headquarters.
 - The timeline for this request is August 5, 2015 through the date that the Unified Command Center in Durango was shut down, October 31, 2015.
 - This request concerns records generated by or shared with members of the Unified Command Center in Durango during its operational period. For example, EPA will search for the records, including but not limited to email, of emergency response team members who worked at or with the Unified Command Center.

General Agreements to Streamline Processing. On the phone call, we agreed to the following, which will allow EPA to streamline processing:

- EPA will treat as nonresponsive news articles received or forwarded via email, unless the relevant email contains commentary on the news articles.
- EPA will treat discrete nonresponsive portions of otherwise responsive documents as nonresponsive, and will redact the nonresponsive portions. For example, in a hypothetical briefing document for an EPA official that concerns a Congressional investigation of Gold King Mine, but that also concerns other, non-Gold King Mine subjects, EPA would redact the non-Gold King Mine subjects as nonresponse. Without this agreement, EPA would need to spend additional time to review the non-Gold King Mine subjects for FOIA exemption review.
- EPA will treat as nonresponsive non-substantive email out-of-office replies and Outlook calendar meeting invitation responses, as well as duplicates of email-out-of-office replies and Outlook calendar meeting invitation responses that include substantive material.

Cost to be Charged to Utah for the FOIA Request. EPA explained that once EPA agrees that the request has been revised such that it reasonably describes the records sought in a way that will permit EPA employees to identify and locate them, EPA will provide Utah with an estimate of charges. Because the EPA headquarters FOIA office determined Utah to fall in the "other" fee category, see 40 CFR § 2.107(c)(iv), Utah will be charged for search and duplication costs, but not for review costs. Of course, you may also appeal EPA's denial of your fee waiver request.

Timing. On the phone, I explained that once EPA agrees that the request reasonably describes the records sought, EPA anticipates that it will need approximately one month to generate search terms for searches of electronic documents, such as email, and to load the search results into the Relativity system for record review. At that point, EPA will know how many documents it needs to review for exemptions from release pursuant to FOIA. As a result, EPA suggests that after the request has been revised to reasonably describe the records sought, EPA will schedule a phone call with you in 30 days to discuss the status of EPA's

processing of your FOIA request and to discuss a timeline going forward. Please let me know if you agree with EPA's suggested approach.

Overlap Between Utah's FOIA Request and Later Discovery in Litigation. We agreed that Utah and EPA will consider how best to avoid duplicative efforts in proceeding with Utah's FOIA requests and Utah's anticipated, future discovery requests in the litigation that Utah has brought against EPA concerning the Gold King Mine release. We agreed to discuss this matter in the future, as Utah's FOIA requests and anticipated, future discovery requests will likely overlap substantially.

Thank you again for a productive phone call on Thursday. I look forward to your responses to my questions above.

Paul Logan

Senior Assistant Regional Counsel | EPA Region 8
303.312.6854 | logan.paul@epa.gov

From: Logan, Paul

Sent: Friday, May 4, 2018 4:06 PM

To: Hofer, Matthew L. <MHofer@mofo.com>

Cc: Engels, Alan <engels.alan@epa.gov>; Hsiao, Peter <PHsiao@mofo.com>; Boydston, Michael <Boydston.Michael@epa.gov>; Gilbert, Alexas <Gilbert.Alexas@epa.gov>; Berg, ElizabethG <Berg.ElizabethG@epa.gov>; Bermes, Peter <Bermes.Peter@epa.gov>

Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Matt,

Thank you for a productive call yesterday. During the call, I promised to send an email summary. I intended to send that email today, but won't have the time to do so. I will send it on Monday.

Have a good weekend.

Paul Logan

Senior Assistant Regional Counsel | EPA Region 8
303.312.6854 | logan.paul@epa.gov

From: Hofer, Matthew L. [<mailto:MHofer@mofo.com>]

Sent: Wednesday, May 2, 2018 4:10 PM

To: Logan, Paul <Logan.Paul@epa.gov>

Cc: Engels, Alan <engels.alan@epa.gov>; Hsiao, Peter <PHsiao@mofo.com>; Boydston, Michael <Boydston.Michael@epa.gov>; Gilbert, Alexas <Gilbert.Alexas@epa.gov>; Berg, ElizabethG <Berg.ElizabethG@epa.gov>; Bermes, Peter <Bermes.Peter@epa.gov>

Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Thank you, Paul. Regarding request #5, for purposes of the first phase of this request, we are using your more narrow definition to request records only after the Blowout when the EPA Unified Command Center in Durango was directing the emergency response. After the Command Center hands off the investigation and remediation to another EPA group and is no longer involved (and that may have been a few months or many months), we will pick up the sequence of events in the next phase to obtain the files from that group. Hope this helps, and I look forward to speaking with you tomorrow.

Best regards,

Matt

MATTHEW HOFER

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From: Logan, Paul [<mailto:Logan.Paul@epa.gov>]

Sent: Wednesday, May 02, 2018 10:50 AM

To: Hofer, Matthew L.

Cc: Engels, Alan; Hsiao, Peter; Boydston, Michael; Gilbert, Alexas; Berg, ElizabethG; Bermes, Peter

Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Matt,

Thank you for your email below. I will schedule a phone call tomorrow, during the times you are available, to discuss your FOIA request.

Concerning your questions about contacting Larry Gottesman – his email address is gottesman.larry@epa.gov. As with all EPA employees, his contact information is available to the public through EPA's online staff directory at <https://cfpub.epa.gov/locator/index.cfm>. The online directory is a helpful tool that you might find useful going forward, to quickly locate EPA employees' contact information.

Thank you for your proposal in your email below, which would clarify your request so that EPA can identify and locate the records that you are seeking. We will discuss your proposal on our phone call tomorrow, including your proposal to divide your FOIA request into phases.

As we'll discuss tomorrow, in many regards your proposal is nearly clear enough for EPA to begin processing your FOIA request, and we anticipate that we'll be able to make the necessary final clarifications tomorrow. However, request number 5 in your proposal does not reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them ("The EPA files from its emergency response team regarding its investigation of the Gold King Mine Blowout and the impacts to the environment, and EPA's actions taken to respond to the Blowout"). Request number 5 could seek documents extremely broadly throughout EPA and could also extend to the ongoing work of the Bonita Peak Mining District Superfund Site, or it could be more narrow – as written, it is unclear to EPA. For example, when you reference the "emergency response team," do you mean to request records only in the few months following the release when the EPA Unified Command Center in Durango was directing the emergency response? Or, would you be requesting records all the way to the date of your FOIA request that relate more broadly to the remedial investigation of the Bonita Peak Superfund Site? We can discuss your intended scope of question 5 tomorrow during our call.

On our phone call tomorrow, we can discuss these and other issues to help you clarify your request so that EPA can begin processing it. We look forward to speaking with you tomorrow.

Paul Logan

Senior Assistant Regional Counsel | EPA Region 8

303.312.6854 | logan.paul@epa.gov

From: Hofer, Matthew L. [<mailto:MHofer@mofo.com>]

Sent: Tuesday, May 1, 2018 5:33 PM

To: Logan, Paul <Logan.Paul@epa.gov>

Cc: Engels, Alan <engels.alan@epa.gov>; Hsiao, Peter <PHsiao@mofo.com>; Boydston, Michael <Boydston.Michael@epa.gov>; Gilbert, Alexas <Gilbert.Alexas@epa.gov>; Berg, ElizabethG <Berg.ElizabethG@epa.gov>

Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Hi Paul,

Thank you for your message and for checking on the phone number for Larry Gottesman, EPA's person for our FOIA fee request. As I mentioned previously, I called him on Tuesday, April 24, and did not receive a response. Can you please provide me with an email address for Mr. Gottesman so I can follow up with him directly? I also welcome your offer for a telephone conference. This week, some times I am available are Thursday between 10:00 a.m. and 3:00 p.m. (PST), and Friday between 1:00 p.m. and 3:00 p.m. (PST). Please let me know if one of those times fits with your schedule.

We are also happy to answer your questions about our request. We are aware of the documents referenced in your email that EPA has made publicly available. But we think EPA would agree that these are not a complete set of the documents EPA has in its possession regarding the Gold King Mine Blowout. EPA and the federal government have performed numerous investigations of the Blowout. The State of Utah's Department of Environmental Quality is a sister environmental protection agency, and we think the public and the taxpayers would prefer that we avoid the cost and delay of repeating those investigations to the extent possible. EPA should agree, given its promise to work hand-in-hand with the states in responding to the Blowout. And, simply put, the law allows public access to these documents.

Accordingly, we propose to proceed in phases, covered by our initial request, but supplemented by additional detail regarding the form and location of the responsive documents, so that the larger project is broken into smaller ones. We will propose the next phase every couple of weeks. We also suggest a regular schedule of phone calls to communicate about these requests, clarify any questions, and discuss the anticipated time for when these documents will be produced. If you wish to invite the U.S. Department of Justice to participate, that would be fine, so that we can coordinate.

For the first phase, we request that EPA produce the following five subcategories of documents:

1. All interviews with witnesses regarding the Gold King Mine Blowout, regarding its cause, effect, and response, including but not limited to EPA employees, contractors, and other percipient and non-percipient witnesses. This should include recordings, transcripts, memos, and notes.
2. The unredacted video and recordings of the Gold King Mine Blowout. Again, this should include recordings and transcripts.
3. The EPA file or files containing the materials used to brief Administrator Gina McCarthy and other EPA officials in their testimony and related presentations to respond to the Congressional investigation of the Gold King Mine Blowout. We expect that these files are generally located in a single location at or near EPA Headquarters.
4. The EPA files for the EPA Inspector General's investigation of the Gold King Mine Blowout. We expect that these files are generally located in a single location at or near EPA Headquarters.
5. The EPA files from its emergency response team regarding its investigation of the Gold King Mine

Blowout and the impacts to the environment, and EPA's actions taken to respond to the Blowout. We expect these files to be located primarily at EPA Region 8's office in Denver, but that some of the files will be located in EPA Headquarters.

Upon reviewing these documents, we expect to be able to provide further specific information about the identity and location of responsive documents. I look forward to speaking to you about this request, and in the meantime I request that EPA begin to collect these documents.

Best regards,

Matt

From: Logan, Paul [<mailto:Logan.Paul@epa.gov>]
Sent: Monday, April 30, 2018 9:04 PM
To: Hofer, Matthew L.
Cc: Engels, Alan; Hsiao, Peter; Boydston, Michael; Gilbert, Alexas; Berg, ElizabethG
Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Matt,

Following up on my email below, this confirms that you have the correct phone number for Larry Gottesman. Further, I confirmed that you should be in contact with him concerning your questions about EPA's denial of your fee waiver request.

Additionally, and as I mentioned previously, I'd like to set up a phone call to discuss your FOIA request. Please let me know what times you're available on Thursday. If Thursday doesn't work, please let me know when you're available on Friday.

From EPA's perspective, a key goal of the call will be to clarify your FOIA request. As currently written, your request does not reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them, as required by law. As a result, EPA is not currently processing your request. During the call we'll discuss how you can clarify the request so that EPA can process it. Note that EPA can work with you to clarify your request at the same time that you pursue a fee waiver appeal, if you decide to do so.

Given the breadth of your request as currently written (including, for example, "[a]ll documents relating to the August 5, 2015 Gold King Mine release"), I would ask that you consider whether your request can be at least partially satisfied by EPA's previous releases of Gold King Mine records to the public. To date, EPA has received approximately 65 FOIA requests concerning Gold King Mine, and has responded by releasing tens of thousands of documents. EPA has posted many commonly sought records on its Gold King Mine website (<https://www.epa.gov/goldkingmine/documents-related-gold-king-mine-release>). Further, EPA posted the majority of its responses to Gold King Mine FOIA requests to the following website (ftp://newftp.epa.gov/GKM_DOCUMENTS/). A small number of responses that may be relevant to your request were not posted to that website, and instead are available through the FOIA Online website (<https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d280f59214> and <https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d2814e8733>).

I look forward to hearing back from you concerning your availability for a call on Thursday or Friday this week to discuss your FOIA request.

Paul Logan
Senior Assistant Regional Counsel | EPA Region 8
303.312.6854 | logan.paul@epa.gov

From: Logan, Paul
Sent: Friday, April 27, 2018 2:46 PM
To: Hofer, Matthew L. <MHofer@mofo.com>
Cc: Engels, Alan <engels.alan@epa.gov>; Hsiao, Peter <PHsiao@mofo.com>
Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Thanks. I'll inquire about the phone number, to make sure you have the correct contact information. I assume the answer is yes, and that EPA hasn't yet responded, but I'll inquire.

Paul Logan
Senior Assistant Regional Counsel | EPA Region 8
303.312.6854 | logan.paul@epa.gov

From: Hofer, Matthew L. [<mailto:MHofer@mofo.com>]
Sent: Friday, April 27, 2018 2:38 PM
To: Logan, Paul <Logan.Paul@epa.gov>
Cc: Engels, Alan <engels.alan@epa.gov>; Hsiao, Peter <PHsiao@mofo.com>
Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Thanks, Paul. I called the number listed in the letter for Larry Gottesman (202-566-1667), but the message indicated that this is the general FOIA hotline for EPA. I left the message on Tuesday, April 24.

Best regards,

Matt

From: Logan, Paul [<mailto:Logan.Paul@epa.gov>]
Sent: Friday, April 27, 2018 1:34 PM
To: Hofer, Matthew L.
Cc: Engels, Alan; Hsiao, Peter
Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Thanks Matt for your email. I know Peter, and he left me a voicemail earlier today as well (thanks Peter). I'll be in touch with you on Monday to set up a call next week to discuss this FOIA request further.

Regarding your questions about the fee waiver denial – who did you call, and when did you make the call? The denial letter lists a phone number for Larry Gottesman, and additional numbers for the Office of Government Information Services. I can't tell from your email who you called.

Additionally, although I am not an expert in this area, I would suggest that you review the EPA FOIA regulations at 40 CFR Part 2, Subpart A, including 40 CFR 2.104 and 2.107. These regulations concern, respectively, appeals of adverse FOIA determinations (including fee waiver denials), and standards that a requester must meet to obtain a fee waiver. Again, however, I am not an expert, and I would suggest that you talk to the listed contacts in the fee waiver denial letter for further information.

Paul Logan
Senior Assistant Regional Counsel | EPA Region 8
303.312.6854 | logan.paul@epa.gov

From: Hofer, Matthew L. [<mailto:MHofer@mofo.com>]
Sent: Friday, April 27, 2018 10:54 AM

To: Logan, Paul <Logan.Paul@epa.gov>
Cc: Engels, Alan <engels.alan@epa.gov>; Hsiao, Peter <PHsiao@mofo.com>
Subject: RE: [EXT] FOIA request number EPA-R8-2018-006885

Mr. Logan,

Thank you for your message, I look forward to speaking with someone from your office. I believe you know my colleague, Peter Hsiao, who is also working on this matter.

We do have a question about our request for a fee waiver. We received the attached letter from Larry Gottesman, the National FOIA Officer, stating that our request was denied. But the stated reason for the denial seems odd to us: "You have failed to a plan to disseminate the records." We were unaware that a plan for disseminating the records was a prerequisite to a fee waiver. As a matter of fact, we intend to make the documents we receive available to the public through a link on the State of Utah's website. Thus, it seems to us that we should qualify for the waiver. I left a voicemail at the phone number listed in the letter about this issue, but I haven't received a response yet. In light of our plan to disseminate the records, will EPA reconsider its denial of the fee waiver?

Best regards,

Matt

MATTHEW HOFER

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From: Logan, Paul [<mailto:Logan.Paul@epa.gov>]
Sent: Friday, April 27, 2018 8:06 AM
To: Hofer, Matthew L.
Cc: Engels, Alan
Subject: [EXT] FOIA request number EPA-R8-2018-006885

Dear Mr. Hofer:

EPA Region 8 has received and is evaluating your FOIA request. Within the next week our office will be contacting you to set up a call to discuss the fees associated with your request, as well as the scope of your request and some questions we have about its interpretation. Meanwhile, if you would like to discuss this request please contact me. I will be working closely with EPA Region 8 FOIA Officer Alan Engels as EPA addresses your request. Thank you.

Paul Logan
Senior Assistant Regional Counsel | EPA Region 8
303.312.6854 | logan.paul@epa.gov

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